

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
BETHLEHEM STEEL CORPORATION, )  
 )  
Appellant, )  
 )  
v. )  
 )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
 )  
Respondent. )

PCHB No. 775

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for alleged emissions in violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith, chairman, and Walt Woodward, member, at a formal hearing in Seattle on June 10, 1975. David Akana, hearings officer, presided.

Appellant was represented by its attorney, Charles R. Blumenfeld; respondent was represented by its attorney, Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded the proceeding.

Witnesses were sworn. Exhibits were admitted. Counsel made

1 arguments.

2 Having considered the evidence and seen the exhibits, and having  
3 considered the briefs and the stipulation of facts, and exceptions from  
4 appellant, said exceptions being granted in part and denied in part, the  
5 Pollution Control Hearings Board makes the following

6 FINDINGS OF FACT

7 I.

8 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d  
9 Ex. Sess., has filed with this Board a certified copy of its Regulation  
10 I containing respondent's regulations and amendments thereto.

11 II.

12 Section 9.03(a) of respondent's Regulation I provides that it shall  
13 be unlawful for any person to cause or allow the emission of any air  
14 contaminant for a period aggregating more than three minutes in any one  
15 hour which is of such opacity as to obscure an observer's view to a degree  
16 equal to or greater than the smoke described in Subsection 9.03(a)(1),  
17 i.e., 40%. Section 3.27 authorizes a penalty of not more than \$250  
18 per day for each violation of Regulation I. Section 9.16 provides that  
19 unavoidable and unforeseeable failure or breakdown shall not be deemed  
20 violations of Regulation I providing certain requirements are met.

21 III.

22 Appellant operates a cold metal shop in Seattle which has two  
23 electric arc furnaces. At this shop, steel scrap is converted into iron  
24 ingots.

25 The furnaces have high and low temperature fume treatment systems  
26 which are designed to treat all polluted air. The low temperature sys

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1 is fully used about five to six hours per 24-hour day. Appellant has  
2 experienced several mechanical failures in the low temperature system,  
3 but considers the system satisfactory. The matter on appeal today  
4 involves the low temperature system.

#### 5 IV.

6 The capacity of the low temperature treatment system is one million  
7 cubic feet per minute (cfm) of air. The system is powered by four fans  
8 which exhaust air into a large baghouse of unusual geometry and consisting  
9 of a total of 4,704 filter bags distributed among 14 compartments. Due to  
10 its large size, the system has problems with the even distribution of  
11 air among the many filter bags and with the re-entrainment of particles  
12 in the airflow, which problems cause the high rate of abrasion of filter  
13 bags in certain areas. Because of these problems, the filter bags burst  
14 in certain areas at an excessive rate as compared to other bags in the  
15 system and also as compared to baghouses of smaller configuration. The  
16 use of heavier filter bag material retards these bag failures but cannot  
17 be considered a solution to appellant's problems.

#### 18 V.

19 Appellant conducts an adequate (daily and weekly) maintenance and  
20 inspection program of the baghouse. It is not possible to identify or  
21 anticipate the failure of a filter bag prior to its failure by means of  
22 the foregoing procedure.

23 Appellant, through its experience, has collected data which identifies  
24 certain areas as being more likely to have repeated bag failures than  
25 other areas. Thus, the failure rate is higher in some areas but  
26 appellant has no knowledge of which particular bag will break in said

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1 areas, or when.

2 A solution to the problem of bag failures continues to be researched  
3 at this time.

4 VI.

5 On November 26, 1974, at about one o'clock p.m., the emissions from  
6 the Bethlehem Steel Corporation's ("Bethlehem") low temperature baghouse  
7 exceeded the opacity limitations of Section 9.03(a) of Regulation I.  
8 These emissions, described above, were observed by the respondent's  
9 inspector for an aggregate of six minutes during the 33 minute period  
10 observation, from 1:02 p.m. to 1:35 p.m. The emission standard violated  
11 by the emission described above was the opacity standard of  
12 Section 9.03(a) of Regulation I. For this violation, a notice of civil  
13 penalty was issued in the amount of \$100, which penalty is the subject  
14 matter of this appeal.

15 VII.

16 Upon observing the emission, the inspector contacted Bethlehem's  
17 fuel engineer, who was informed of the emission. Prior to the inspector's  
18 contact, Bethlehem's personnel had no knowledge of the emission described  
19 above. Immediately upon learning of the emission, Bethlehem dispatched  
20 personnel to determine where the cause of the problem was, and when  
21 located, the section of the baghouse where the failure had occurred was  
22 shut down. This shutdown occurred within 30 minutes of the inspector's  
23 notification. The emission described above was the result of the failure  
24 of a filter unit (bag).

25 VIII.

26 At no time did appellant notify respondent's office of the problem

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1 or of the facts pertaining to the problem. Appellant had assumed that  
2 respondent's inspector's observation of the violation was sufficient  
3 notice to the respondent.

4 IX.

5 Any Conclusion of Law which should be deemed a Finding of Fact is  
6 hereby adopted as such.

7 From these Findings the Pollution Control Hearings Board comes to  
8 these

9 CONCLUSIONS OF LAW

10 I.

11 It is not contested that appellant violated Section 9.03 of  
12 respondent's Regulation I. What is contested here are those two issues  
3 listed in the Board's February 25, 1975 Pre-Hearing Order:

- 14 1. Was the failure of the filter unit (bag) an unavoidable and  
15 unforeseeable failure or breakdown, or an unavoidable and  
16 unforeseeable upset or breakdown of process equipment or  
control apparatus as provided in Section 9.16 of Regulation I?  
17 2. Did the appellant, Bethlehem Steel Corporation, reasonably  
comply with Section 9.16(1) of Regulation I?

18 As to the first issue, we conclude that there was a high probability  
19 (and hence foreseeability) that bag failures would occur in certain areas  
20 of the filter bag arrangement because appellant was experiencing a problem  
21 repetitious in nature, although the event of a particular bag failure was  
22 not foreseeable. In such a situation, where a continuing problem has been  
23 identified, appellant cannot avail itself of Section 9.16.

24 Assuming that appellant did fall within Section 9.16, we conclude  
25 that appellant did not comply with subsection (1) thereof which provides  
6 that:

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1 The owner or operator of such process or equipment shall  
2 immediately notify the Agency of such occurrence together  
3 with the pertinent facts relating thereto regarding  
nature of problem as well as time, date, duration and  
anticipated influence on emissions from the source.

4 Because an inspector merely sees a violation, it does not follow that the  
5 inspector, or the respondent here, knows the nature of the problem. All  
6 respondent knows at this time is that a violation has occurred.  
7 Appellant, if otherwise qualified to fall within the exception of  
8 Section 9.16, must notify respondent immediately after ascertaining that  
9 there is a problem and, if necessary, provide further information within  
10 a reasonable time period. The language of Section 9.16(1) does not  
11 provide that the exception is lost if a notice of violation has been  
12 issued. Thus, we conclude that the use of Section 9.16(1) does not turn  
13 on whether or not a notice of violation has been issued. If an operator  
14 complies with the procedure, and otherwise qualifies, Section 9.16(1) may  
15 be used whether or not a notice of violation has been issued.

## 16 II.

17 Appellant has, and is, experiencing problems of a repetitious nature.  
18 Even if appellant notified respondent of its general problem, Section  
19 9.16 would not be the proper provision to save appellant from violating  
20 Regulation I. As suggested by the respondent's attorney, appellant should  
21 seek a variance.

## 22 III.

23 Any Finding of Fact which should be deemed a Conclusion of Law  
24 is hereby adopted as such.

25 From these Conclusions the Pollution Control Hearings Board enters  
26 this

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ORDER

The \$100 civil penalty for causing emissions in violation of respondent's Regulation I is affirmed.

DATED this 2nd day of September, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith  
CHRIS SMITH, Chairman

Walt Woodward  
WALT WOODWARD, Member

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